



# DEVONSHIRE

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October 25, 2011

**RECEIVED**

**OCT 31 2011**

**MILLER NASH LLP**

Jeffrey C. Miller, Esq.  
Miller & Nash  
500 East Broadway, Suite 400  
Vancouver, WA 98660-3324

RE: Insured: Kaiser Gypsum Company, Inc. (Kaiser Gypsum)  
Insurer: TIG Insurance Company, formerly Transamerica Premier  
Insurance Company (TIG)  
Policy No.: USE 1399-7785  
Claim: Lower Duwamish Waterway Superfund Site  
Your Reference No.: 97785-U000293  
Our File No.: 10012609

Dear Mr. Miller:

Thank you for your letter of April 29, 2011 confirming that a separate request for coverage is being presented by Kaiser Gypsum.

Although Kaiser Gypsum is not listed as an insured on the TIG policy issued to Kaiser Cement, it is our understanding from the June 2010 response issued to the U.S. Environmental Protection Agency (EPA) that during 1984-1985, Kaiser Gypsum was entirely owned by Kaiser Cement. It is your contention, therefore, that Kaiser Gypsum is entitled to seek coverage as an additional insured under the Kaiser Cement policy.

TIG is reserving all of its rights with respect to whether, in fact, Kaiser Gypsum is an insured under this policy. In this regard, we would appreciate your clarifying whether, during the period of time that it operated the Seattle property, Kaiser Gypsum maintained liability insurance of its own.

In light of the high layer of insurance underwritten by TIG, we will assume that this notice of loss is precautionary in nature, as coverage would only arise in the event that an insured is legally obligated to pay damages exceeding \$30,000,000 attributable to property damage

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during the policy period. Under the circumstances, TIG is reserving all of its rights with respect to any claimed coverage under the policy including:

- whether these claims arise out of an "occurrence";
- whether Kaiser Gypsum will be legally obligated to pay damages on account of property damage;
- whether these claims are on account of property damage during the period TIG's policy;
- whether coverage is excluded as involving pollution arising out of discharges of pollutants that were neither sudden nor accidental; and
- whether coverage is excluded as involving property damage to the insured's own property or property under its control.

Additionally, per our correspondence with respect to your separate claim for Kaiser Cement, we would appreciate your providing us with narrative responses to the following:

1. What is the factual basis upon which the U.S. EPA contends that Kaiser Gypsum and/or its successors may be potentially responsible parties with respect to this site?
2. Please identify all known sources of contamination at the site.
3. Please identify the operations conducted by Kaiser Gypsum or its affiliates that are claimed to have contributed to the pollution at this site.
4. Please identify any and all sudden and accidental releases of contaminants that may have resulted in property damage between May 1, 1984 and April 1, 1985.
5. Apart from the Kaiser Cement policies identified in the charts that you recently provided to us, did Kaiser Gypsum maintain general liability insurance of its own?
6. If you contend that liability insurance is unavailable to Kaiser Gypsum for any of the years in question implicated by this loss for any reason, please identify the policy in question and the reason for its unavailability.

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Pending receipt of this information, TIG is reserving all of its rights with respect to whether its policy may afford coverage for Kaiser Gypsum's liability. Likewise, it reserves the right to supplement the foregoing statement of its coverage position as additional facts may come to its attention or as circumstances may warrant.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Marilyn Kopp".

Marilyn K. Kopp, CPCU, ARe  
DEVONSHIRE  
For TIG Insurance Company

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c: Michael F. Aylward, Esq., Morrison Mahoney, LLP

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